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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/851,645	05/09/2001	David Frederick Bantz	YOR920010277US1	3595

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EXAMINER	
BARQADLE, YASIN M	
ART UNIT	**PAPER NUMBER**
2153	

DATE MAILED: 10/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/851,645	BANTZ ET AL.	
	Examiner	Art Unit	
	Yasin M. Barqadle	2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 August 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-52* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *4,17,29 and 42* is/are allowed.

6)☒ Claim(s) *1-3,5-16,18-28,30-41 and 43-52* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 08, 2005 has been entered.

Response to Amendment

2. The amendment filed on August 08, 2005 has been fully considered but are moot in view of the new grounds of rejection

- Claims 1-3,5-16, 18-28, 30-41 and 43-52 are presented for examination.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-3,5,7-16, 18, 20-28, 30,32-41 and 43, 45-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hubbard USPN (6654783) in view of Gidwani USPN. (6640239).

As per claim 1, Hubbard teaches a method of providing a subscription computing service (fig. 1A) to a subscriber computing system (fig.1, client system 108,110 and 112), comprising:

initiating the subscription computing service based on subscription computing information (workload and tasks are sent clients based on the determination of the relative capabilities of the client systems. Depending upon the workload project results are provided to customers (subscribers) col. 6, lines 22-61; col. 7, lines 10-50 and col. 16, lines 10-36), wherein the subscription computing information identifies services to be provided to the subscriber (Hubbard teaches identifying the capabilities of the distributed devices and the aggregation of these capabilities to accomplish processing, storage, broadcasting or desired project objective (col. 4, lines 18-28;

col. 5, lines 11-35 and col. 16, lines 10-36), determining (relative capabilities of the client system is determined) if one or more spare resources are available by requesting system operation information from the subscriber computing system [capabilities such as processing power, disk storage capacity, communication types and other capabilities that are available within the client system col. 7, lines 1-9 and col. 7, lines 46-62 col. 8, lines 1- 11 and col. 16, lines 10-36];

allocating a portion of the one or more spare resources if one or more spare resources are available [client systems allow its capabilities to be utilized by the distributed processing system col. 5, lines 11-35 and col. 7, lines 1-9]; and

issuing an instruction to the subscriber computing system to perform at least one operation using the allocated portion of the one or more spare resources to thereby provide the subscription computing service based on subscription computing information [workloads to be performed are selected for client systems. The workloads are controlled through an operational code. A capability vector database keeps track client systems and their capabilities col. 7, lines 1-13; col. 7 lines 63 to col. 8, line 11 and col. 16, lines 10-36].

Although Hubbard shows substantial features of the claimed invention, including identifying the capabilities of the

distributed devices and the aggregation of these capabilities to accomplish processing, storage, broadcasting or desired project objective as explained above, he does not explicitly show wherein the services provided to the subscriber are identified in a service agreement.

Nonetheless, this feature is well known in the art and would have been an obvious modification of the system disclosed by Hubbard, as evidenced by Gidwani USPN. (6640239).

In analogous art, Gidwani whose invention is about providing plurality of services to subscriber using a UIP client, disclose services provided to the subscriber are identified in a service agreement (fig.25a and 25b col. 61 lines 1-45. see also col. 7, lines 1-6 and col. 8, lines 28-38).

Giving the teaching of Gidwani, a person of ordinary skill in the art would have readily recognized the desirability and the advantage of modifying Hubbard by employing the system of Gidwani because it allows subscribers to utilize resources based on their needs and the service providers can simply monitor total processing utilization numbers and total load factors to determine over-subscription and resource allocation needs of the network. In this way a new means and level of network performance prediction and control is achieved.

As per claim 2, Hubbard teaches the method of claim 1, further comprising receiving a command from a human operator to initiate the subscription computing service, wherein the steps of determining and issuing are performed in response to receiving the command to initiate the subscription computing service [col. 7, lines 1-32 and col. 110, lines 15-33].

As per claim 3, Hubbard teaches the method of claim 1, wherein the subscription computing information is maintained in subscription services database [col. 15, lines 63-66 and col. 16, lines 10-36].

As per claim 5, Hubbard teaches the method of claim 1, wherein the subscriber computing system includes a plurality of subscriber computing devices (fig.1A, client system 108,110 and 112), and wherein determining if one or more spare resources are available in the subscriber computing system includes requesting operating information from the plurality of subscriber computing devices [col. 7, lines 1-32 and col. 10, lines 38-64].

As per claim 7, Hubbard teaches the method of claim 1, further comprising storing information identifying the allocation of the

portion of the one or more spare resources and the at least one operation [col. 6, line 61 to col.7, line 13].

As per claim 8, Hubbard teaches the method of claim 1, wherein the one or more spare resources includes at least one of spare data storage and spare computation cycles [col. 5. lines 24-44].

As per claim 9, Hubbard teaches the method of claim 1, wherein the subscriber computing system includes a plurality of subscriber computing devices (fig. 1A and fig. 8) and wherein the subscription computing service is data backup from a first subscriber computing device of the plurality of subscriber computing devices to a second subscriber computing device of the plurality of subscriber computing devices [col. 19. lines 6-33].

As per claim 10, Hubbard teaches the method of claim 1, wherein the at least one operation includes reading data from a computing system of another subscriber and writing the data to the portion of the one or more spare resources [col. 19. lines 6-45].

As per claim 11, Gidwani teaches encrypting the data (col. 68, lines 1-15).

As per claim 12, Hubbard teaches the method of claim 1, wherein the at least one operation includes sending work from a computing system of another subscriber to the one or more spare resources [col. 19. lines 6-45].

As per claim 13, Hubbard teaches the method of claim 1, wherein the subscriber computing system includes a first subscriber computing system and a second subscriber computing system, wherein the first subscriber computing system is operated by a first subscriber and the second computing system is operated by a second subscriber different from the first subscriber (fig. 1A and fig. 8), and wherein the subscription computing service includes at least one of backing up data from the first subscriber computing system to one or more spare resources of the second subscriber computing system and sending work from the first subscriber computing system to one or more spare resources of the second subscriber computing system [col. 6, line 55 to col. 7, line 13 and 19. lines 6-45].

As per claim 14, Hubbard teaches a method of providing a subscription computing service (fig. 1A) to a subscriber computing system (fig. 1A, clients 108,110 and 112), comprising:

initiating the subscription computing service based on subscription computing information (workload and tasks are sent clients based on the determination of the relative capabilities of the client systems. Depending upon the workload project results are provided to customers (subscribers) col. 6, lines 22-61; col. 7, lines 10-50 and col. 16, lines 10-36), wherein the subscription computing information identifies services to be provided to the subscriber (Hubbard teaches identifying the capabilities of the distributed devices and the aggregation of these capabilities to accomplish processing, storage, broadcasting or desired project objective (col. 4, lines 18-28; col. 5, lines 11-35 and col. 16, lines 10-36).

determining if a resource of a subscriber computing device is underutilized by requesting system operation information form subscriber computing system [col. 5, lines 11-35 col. 6, lines 28-31 and col. 7, lines 1-9; col. 7, lines 46-62; col. 8, lines 1- 11 and col. 16, lines 10-36]; and

issuing an instruction to the subscriber computing device to perform at least one subscription computing service operation using the resource if the resource is determined to be underutilized, to thereby provide the subscription computing service based on subscription computing information [workloads to be performed are selected for client systems. The workloads

are controlled through an operational code. A capability vector database keeps track client systems and their capabilities col. 7, lines 1-13; col. 7 lines 63 to col. 8, line 11 and col. 16, lines 10-36].

As for the services to be provided to the subscriber are identified in a service agreement (see the rejection in claim 1 above.

As per claim 15, Hubbard teaches the method of claim 14, further comprising receiving a command from a human operator to initiate the subscription computing service, wherein the steps of determining and issuing are performed in response to receiving the command to initiate the subscription computing service [col. 7, lines 1-32 and col. 110, lines 15-33].

As per claim 16, Hubbard teaches the method of claim 14, wherein the subscription computing information is maintained in subscription services database [col. 15, lines 63-66 and col. 16, lines 10-36].

As per claim 18, Hubbard teaches the method of claim 14, wherein the subscriber computing system includes a plurality of subscriber computing devices, and wherein determining if a

resource of a subscriber computing device in the subscriber computing system is underutilized includes requesting operating information from the plurality of subscriber computing devices [col. 7, lines 1-32 and col. 10, lines 38-58].

As per claim 20, Hubbard teaches the method of claim 14, further comprising storing information identifying the resource and the at least one operation [col. 6, line 61 to col.7, line 13].

As per claim 21, Hubbard teaches the method of claim 14, wherein the resource includes at least one of spare data storage and spare computation cycles [col. 5. lines 24-44].

As per claim 22, Hubbard teaches the method of claim 14, wherein the subscriber computing system includes a plurality of subscriber computing devices and wherein the subscription computing service is data backup from a source subscriber computing device of the plurality of subscriber computing devices to the subscriber computing device [col. 19. lines 6-33].

As per claim 23, Hubbard teaches the method of claim 14, wherein the at least one subscription computing service operation

includes reading data from a computing system of another subscriber and writing the data to the portion of the one or more spare resources [col. 19. lines 6-45].

Regarding claim 24, Gidwani teaches encrypting the data (col. 68, lines 1-15).

As per claim 25, Hubbard teaches the method of claim 14, wherein the at least one subscription computing service operation includes sending work from a computing system of another subscriber to the subscriber computing device [col. 19. lines 6-45].

As per claims 26 and 39, Hubbard teaches an apparatus for proving a subscription computing service to a subscriber computing system (clients 108, 110 and 112), comprising:

a controller (204, fig. 3A), and

a memory (308, fig. 3A) coupled to the controller, wherein the controller initiating the subscription computing service based on subscription computing information (col. 6, lines 22-61; col. 7, lines 10-50 and col. 16, lines 10-36), wherein the subscription computing information identifies services to be provided to the subscriber (Hubbard teaches identifying the

capabilities of the distributed devices and the aggregation of these capabilities to accomplish processing, storage, broadcasting or desired project objective (col. 4, lines 18-28; col. 5, lines 11-35 and col. 16, lines 10-36), determines if one or more spare resources are available by requesting system operation information from the subscriber computing system (col. 10, lines 38-50), allocates a portion of the one or more spare resources if one or more spare resources are available (col. 10, lines 59-66), and issues an instruction to the subscriber computing system to perform at least one operation using the allocated portion of the one or more spare resources, based on instructions stored in the memory to thereby provide the subscription computing service based on subscription computing information [workloads to be performed are selected for client systems. The workloads are controlled through an operational code. A capability vector database keeps track client systems and their capabilities col. 7, lines 1-13; col. 7 lines 63 to col. 8, line 11 and col. 16, lines 10-36].

As for the services to be provided to the subscriber are identified in a service agreement (see the rejection in claim 1 above.

As per claims 27 and 40, Hubbard teaches the invention, wherein the controller receives a command from a human operator to initiate the subscription computing service, and wherein the controller determines if one or more spare resources are available, allocates a portion of the one or more spare resources, and issues an instruction to the subscriber computing system in response to receiving the command to initiate the subscription computing service [col. 7, lines 1-32 and col. 110, lines 15-33].

As per claims 28 and 41, Hubbard teaches the method of claim 1, wherein the subscription computing information is maintained in subscription services database [col. 15, lines 63-66 and col. 16, lines 10-36].

As per claims 30 and 43, Hubbard teaches the invention, wherein the subscriber computing system includes
a plurality of subscriber computing devices, and wherein the controller determines if one or more spare resources are available in the subscriber computing system by requesting operating information from the plurality of subscriber computing devices [col. 7, lines 1-32 and col. 10, lines 38-58].

As per claims 32 and 45, Hubbard teaches the invention, further comprising a storage device coupled to the controller, wherein the storage device stores information identifying the allocation of the portion of the one or more spare resources and the at least one operation [col. 6, line 61 to col.7, line 13].

As per claims 33 and 46, Hubbard teaches the invention, wherein the one or more spare resources includes
at least one of spare data storage and spare computation cycles [col. 5. lines 24-44].

As per claims 34 and 47, Hubbard teaches the invention, wherein the subscriber computing system includes
a plurality of subscriber computing devices and wherein the subscription computing service is data backup from a first subscriber computing device of the plurality of subscriber computing devices to a second subscriber computing device of the plurality of subscriber computing devices [col. 19. lines 6-33].

As per claims 35 and 48, Hubbard teaches the invention, wherein the at least one operation includes reading data from a computing system of another subscriber and writing the data to the portion of the one or more spare resources [col. 19. lines 6-45].

Regarding claims 36 and 49, Gidwani teaches encrypting the data (col. 68, lines 1-15).

As per claims 37 and 50, Hubbard teaches the invention, wherein the at least one operation includes sending work from a computing system of another subscriber to the one or more spare resources [col. 19. lines 6-45].

As per claims 38, Hubbard teaches the invention, wherein the subscriber computing system includes a first subscriber computing system and a second subscriber computing system (fig.1A), wherein the first subscriber computing system is operated by a first subscriber and the second computing system is operated by a second subscriber different from the first subscriber, and wherein the subscription computing service includes at least one of backing up data from the first subscriber computing system to one or more spare resources of the second subscriber computing system and sending work from the first subscriber computing system to one or more spare resources of the second subscriber computing system [col. 6, line 55 to col. 7, line 13 and 19. lines 6-45].

Regarding claims 51 and 52, these are computer program product claims with similar limitations as independent claims 1, 14 and 26 above. Therefore, they are rejected with similar rationale.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 6, 19, 31 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hubbard USPN (6654783) in view of Gidwani USPN. (6640239) and further in view of Lettvin USPN (5559960).

Regarding claims 6, 19, 31 and 44, although Hubbard and Gidwani show substantial features of the claimed invention as explained in the corresponding independent claims, they do not explicitly show writing data to a hidden partition of a storage device.

Nonetheless, this feature is well known in the art and would have been an obvious modification of the system disclosed by Hubbard and Gidwani, as evidenced by Lettvin USPN. (5559960). In analogous art, Lettvin whose invention is a system that provides a hidden partition for a computer program, discloses writing data to a hidden partition of a storage device. [Col. 3, lines 25-37]. Giving the teaching of Lettvin, a person of ordinary skill in the art would have readily recognized the desirability and the advantage of modifying Hubbard and Gidwani by employing the system of Lettvin so that programs and information stored in the hidden partition are kept in a secure storage [Col. 3, lines 31-51].

Conclusion

The prior made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yasin Barqadle whose telephone number is 571-272-3947. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Burgess can be

reached on 571-272-3949. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

Information regarding the status of an application may be obtained form the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either private PAIR or public PAIR system. Status information for unpublished applications is available through private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

YB

Art Unit 2153

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